

Meeting Date: 5-9-06

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item #

4 F 1



DATE: May 3, 2006

TO: City Manager for Mayor and Council Information

FROM: Deputy City Manager

SUBJECT: Community Forums Held to Obtain Public Comment on Firefighters' Union and Police Officers' Association Request to Place Binding Interest Arbitration on the November 2006 Ballot

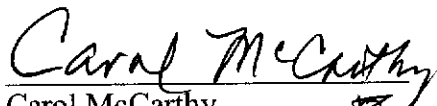
Council directed the City Manager to hold community forums to obtain public comment regarding the Firefighters' Union and Police Officers' Association collective request to place binding interest arbitration for these unions on the November 2006 ballot. Staff organized two community forums, which were held May 2 at the Santa Clara Convention Center and May 3, 2006 at the Central Park Library.


Forums were promoted in a variety of ways, including a media release; flyers placed at public counters; information mailed to Board and Commission Members and to clubs, organizations and community groups; announcements placed on the government Cable Channel 15; and information posted on the City's website. As an example of other promotion undertaken for the forums, a notice about the forum at the Convention Center was placed on their reader board.

The League of Women Voters provided impartial moderation for the forum. Attached is the format followed for the forums, as agreed to by the Unions and the City.

Attendance at the Convention Center forum was approximately 20 people, including residents, two Council Members, Union members and other employees. Attendance at the Library was approximately 36 people, including generally the same types of individuals. The "Santa Clara Weekly" attended the first forum; the "San Jose Mercury News" attended the second forum. At the conclusion of both forums, those in attendance were asked to write down their comments, to be provided to the Mayor and City Council, or they could email the Mayor and Council; the email address was provided by handout. Questions raised at both forums, and comments made at the forums, are also attached, including a written submission from resident Grant Danielson. The moderator combined similar questions, where possible, and due to time constraints, not all questions were addressed during the forum. Videotapes of both forums will air twice a day (10 a.m. and 6 p.m.) on Cable Channel 15 through Monday, May 8, 2006. Slides promoting the airing will appear frequently on Channel 15. Copies will also be placed at both City libraries, a copy of each will be provided to the Unions, and a copy will be provided to the Clerk's Office.

APPROVED:


Carol McCarthy
Deputy City Manager


Jennifer Sparacino
City Manager

Documents Related to this Report: Forum Format; Questions and Comments raised at both Community Forums
I:\CTYMNGRS\AGENDA REPORTS\2006\Binding Interest Arbitration Community Forums Results.doc

Binding Arbitration

2 Community Forums

Purpose: To let the public know that the Firefighters Union and Police Officers Association have made a proposal for binding arbitration and are asking that the item be placed on the ballot, to educate the public about the definition of binding arbitration, to allow the Unions and the City to discuss their perspectives about the pros and cons of the matter, and to gather preliminary public input on the idea for Council's information.

Format:

- Welcome, introductions, and overview of forum purpose and structure; proposed ballot measure
(5 min; League of Women Voters/moderator)
- Explanation of binding arbitration
(5 min; definition read by moderator)
- Firefighters Union and Police Officers Association explain why they have made the proposal for binding arbitration
(15 – 20 min; up to three speakers from Union/Association)
- Rebuttal
(2 min. for City comment on what has been stated)
- City staff explain their position on binding arbitration
(15 – 20 min; up to three speakers from City)
- Rebuttal
(2 min. for Union comment on what has been stated)
- Public Q&A (via cards to moderator)
(15 – 20 min; moderator controls time of answers and works to ensure both sides have opportunity to speak to questions)
- Wrap Up
(1 min. each; Union and City summarize their position)
- Adjournment
(1 min.; Moderator thanks participating speakers and thanks public for attending. Moderator asks people to write down their comments about what has been stated this evening and to turn those in before leaving. Those comments will be forwarded to the Council. Audience may also email their comments to MayorandCouncil@ci.santa-clara.ca.us)

Total time: About 1 to 1.5 hours

Questions and Comments Made at Binding Arbitration Community Forums
May 2, 2006, Santa Clara Convention Center and
May 3, 2006, Central Park Library

- The argument is being used by the Unions that this is the only alternative since a strike is illegal. In all my years in the public and private sector, I also couldn't strike. If I didn't like my salary increase, I could look for a job and quit. Why do the Unions feel it is necessary to bandy the "strike" argument?
- What specific training in conflict resolution do peace officers have? How does the development of this skill set facilitate negotiation?
- Would the proponents of binding arbitration support language that the arbitrators must be citizens and registered voters of the City of Santa Clara? Why or why not?
- "Fairness" keeps being mentioned. Does the Union think it is fair to other City employees who are getting by without a pay raise and no new hires?
- Tell me why binding arbitration will not affect the Fire Chief or Police Chief's decisions to run their departments.
- Why do we need to change the City's Charter to have binding arbitration?
- What percentage of our public safety employees are residents of Santa Clara?
- Has the deadline passed in which the Police Officers Association and Firefighters Association will no longer offer to pay the cost of putting the measure on the ballot?
- Hasn't the City been fair with negotiations in the past?
- What are some of the difference of opinions that have not been solved in the past, where this binding arbitration would solve these problems?
- Under the current system, could the parties invoke binding arbitration on a per issue basis if they so desired?
- Given the cost to both the City and both organizations, is there any way that both the City and the two groups in question could submit to a one-year cooling off period and see how bargaining could be effectively done?
- What's "broken" in the current system? What alternatives were considered? Why is amending the City Charter to require binding arbitration the best of those alternatives?
- I see that this measure, if passed, would effectively encourage other groups working for the City to try something similar. Is the City and the POA/Firefighters willing to consider some other alternative types of bargaining to ameliorate their issues?
- What effect will this have on our taxpayers?
- What has caused this sudden decision to request this Charter change for binding arbitration?
- How many times has the City Charter been altered and for what benefit?
- I found the forum to be informative. It appears to me that neither side is willing to budge. The POA/FFA seems determined to put this measure on the ballot. This being the case, since the POA/FFA want to put it on the ballot, they should bear the burden of the cost. I propose to let them pay for the cost.
- Let the Council put it on the ballot and have the POA and Fireman pay the bill.
- Why aren't firefighters sitting at the speakers' table?
- How have public safety officers been treated unfairly in bargaining process?
- The City Council's job is to serve the citizens. With this in mind, can you explain why the City Manager, Police Chief and Fire Chief are so adamantly opposed to place binding arbitration on the ballot for a vote by the citizens?
- The Chiefs have said that arbitration pushes the end result to the middle. Since PD/FF would only want to arbitrate as a last ditch effort, wouldn't they know and expect that? Thus, that would be better than what the City's offer is, as a matter of course, right?
- Were attorneys used in last negotiations and why? How much did it cost each side if they did use them?

- The Police Officers and Firefighters previously brought up this issue before the Council. Was there any direction at that time to study the issue by a Blue Ribbon Committee? This seems like a stall tactic to avoid the issue.
- Are the union representatives willing to guarantee that there will be no adverse affect on the City's budget due to binding arbitration? Is there any incentive not to go to binding arbitration by the unions?
- Fire Chief, isn't North Tahoe in Nevada?
- Has membership of IAFF & POA taken a formal vote on this issue? An informal vote?
- My wife and I are both residents of Santa Clara and it is extremely important for our Council Members to represent us. We elect you to do that and we trust you. Please do not give up any of your responsibilities. If you do, you violate our trust in you.
- Mr. Spitaleri says the arbitrator cannot make an excessive award. Have the courts ruled on what is excessive? Presumably, the City cannot be made to spend more than 100% of its budget but what is excessive?
- Council: I was disappointed in the format of the public sessions at the Library. All of the questions were not able to be answered and that didn't help understanding the issue completely.
- Both the Police Chief and City Manager stated at the beginning of their presentations that the negotiation process has always been fair. At the end, they admitted that there have been some problems with negotiation and that changes will occur next time around. I'm confused, have there been problems or not? And if not, why are changes necessary? It seems that the Police Chief and City Manager haven't been entirely honest. I would like to hear the whole truth.
- When did firefighters last have a pay raise? Why?
- Earlier, the Fire Chief observed that another City's arbitration cost the firefighters their preferred schedule. Doesn't this show that arbitration is impartial and that each side should be reasonable?
- Last night, Mr. Spitaleri stated that Binding Arbitration would not be used for working conditions. However, the text of the ballot measure states that "...hours, and other terms and conditions of City employment..." would be subject to arbitration. Which is it?
- If Binding Arbitration is so 'fair,' why do only 1/4 of the charter cities in California allow its use, especially if it has been available for over 25 years?
- Does the union rank and file know that binding arbitration threatens their job if it is approved?
- If the labor unions and city management come to "impasse" currently, what options are available to both parties?
- The assumption here is that current process is unfair because public safety employees cannot strike. Are bargaining units saying there are issues so contentious that they would want to strike over these issues? If so, what are these issues?
- If arbitration imposes certain financial obligations on the city in excess of budget numbers, would city have to cut employees or programs to be able to handle new obligations?
- What brought about the Fire and Police desire to obtain Binding Interest Arbitration? e.g. recent contract disputes, personnel issues, etc.?
- I'm on the Civil Service Commission. One of the functions of the Commission is to conduct boards of review as requested for classified employees. The last public safety board of review took 10 days and consumed over 40 hours. Assuming a 3-member board and assuming the current rates charged by arbitrators, how much would such a hearing cost in the future?
- Question to Union or Association representatives: What are the current issues which you would see arbitration for and how far apart are the parties from resolution?
- City management, then Union: The only example cited by the Fire Chief regarding an arbitration decision was one which the union lost (San Jose FD schedule change), so why does City management state that arbitration will threaten the economic future of the City? Why specifically does City management assume that they will lose in a future arbitration hearing if they are being fair?
- Why does the City Council not reject this proposal out of hand at this time, prior to the next labor negotiations beginning at the end of 2006 since rules precluding binding arbitration are already in place?

- At the April 25 City Council meeting, it was stated that last contract negotiations for POA/Firefighters was 2003. Since then, improvements were made to bargaining process. So why are we doing this now when new process (which seems to work) has not been tried with police officers and firefighters?
- City Manager, can you name any California city that had to raise taxes and cut programs because of Binding Interest Arbitration?
- Please address problems with Oakland police and arbitration, specifically redeployment issues between Chief and the Union at the beginning of this year. Can happen here.
- Why not let the agreement reached in the last negotiations prevail which makes the issue of binding arbitration moot?
- For Mr. Nikolai and Mr. Niblock: You have mentioned that Binding Arbitration will allow a means of resolving unresolved disputes. Would you each please provide us with 3 – 5 examples of unresolved differences that Binding Arbitration would have resolved?
- In past discussions, the City Manager used “extravagant,” “generous,” and “overly fair” to describe dealings with Police and Firefighters. Yet the City’s observations, examples and predictions are necessarily based on losing the arbitration: Why the paradox?
- Do the City Council members realize that the citizens know that some of them have sold out to the unions and want payback to advance their personal agendas and greed?
- The City presents themselves as “overly fair” but it seems the bottom line is still take it or leave it. Isn’t the City’s position really that of a “benevolent dictator” – “Just trust me” and isn’t that subject to change, especially with different administrations?
- The City Manager stated that binding arbitration could send the City into bankruptcy, loss of City services, raise taxes, etc. Can the City Manager cite examples of this occurring in any other Bay Area cities with binding arbitration in the past 25 years? If not, this seems to be a scare tactic. I just want to hear the facts. And isn’t it true that taxes cannot be raised without a 2/3 majority vote of the citizens?
- Chief of Fire Dept., how did San Jose actually end up going to a 3-4 from a 4-6? It’s still a 56 hour week. Do you have any other facts on that issue? I don’t see how an arbitrator would make a decision like that if it’s a no loss, no gain to both the labor side and city.
- Is this issue a grand conspiracy to destroy the citizens’ budgetary protection through their City Charter provisions?
- Why would the City oppose a neutral 3rd party arbitrator to resolve disputes between Public Safety and City management?
- Since things have worked so well for so many years, why change the City Charter now? The two Chiefs of our great public protection organizations and City management are against this change and we agree with them.
- Question to Tony Spitaleri, if as you say an arbitrator’s decision can be challenged in the courts and set aside, how does that differ from just continuing negotiations between the parties?
- Question to Gary Niblock, how can you say that binding arbitration maintains local control when the decision on the issue is left to a third party, not a Santa Clara City resident?
- Does the City Council no longer trust its management? Does the Council think there are unbudgeted funds available to pay for the results of binding arbitration when the unions stall to ensure it (binding arbitration) is implemented?
- Does the City Council know that the unions’ offer to fund a special election explains that binding arbitration is a no win for the citizens and disastrous to the Police and Fire Departments?
- Mr. Spitaleri said last night that three arbiters would come from a list of certified arbiters maintained by the State. The ballot measure language reads totally differently. It implies that the State list is only consulted if the two selected arbiters cannot agree on the third member of the panel. Which is it?

To The Mayor, City Council, City Manager, representatives of Police and Fire Associations and attending citizens:

Point at issue: BINDING ARBITRATION -

3 May 2006

My name is Grant Danielson and I am a 46 year resident of Santa Clara City. I hope to bring a qualified perspective to this hearing and in particular my understanding of the point at issue because of my personal involvement in Labor/Management issues as a former President of a local union and a former management representative for one of our South Bay's largest employers and a private Labor/Management consultant licensed in the city of Santa Clara.

I believe unions have served a very useful purpose in the military/industrial complex for both their members and management personnel. I have negotiated labor issues from both sides of the table and been a representative in the arbitration process. Therefore I believe that I have a unique perspective.

One of the most distinct differences in the operation of businesses versus city operations is profit. Businesses are in business to make a profit. Their management is held accountable for "the bottom line" and their shareholders demand a certain level of profit if they are to continue to hold the businesses' stock. Therefore, both parties to a wage issue in negotiations, have to consider the company's profit margin as a silent partner to their negotiations. Management representatives must continually seek to maximize the profits of the company in order to maintain a technically competent labor force.

Not so with cities! Few Santa Clara residents will support City Manager Sparacino's efforts to maximize the City's profits at the taxpayers expense. The fact is that cities do not operate on a profit basis. They try to provide the necessary and expected city services at a reasonable tax cost to all its residents. I applaud our city management team for the job they have done in this city's history and currently. We are the envy of surrounding communities in terms of our city services costs. So, little comparison can be made to cities operations and "for profit" businesses.

That brings us to the police and fire associations point of comparison to other cities regarding wages and benefits they provide their workers. Just as the sheriff of Mayberry's wages and benefits differed from surrounding communities so to do Chief Lodges and his deputies. Sheriff Andy chose to live at Aunt Bea's house and serve that community because it suited him and his life style. When his deputy, Barney, was offered a better job in a nearby larger city he was sent on his way with the best wishes of all who knew him. So when I hear that our Association members claim that nearby communities pay more or have different benefits I say "so what"! There is no universally competitive salary standard for cities. Of course our management team compares our wages and benefits to other communities to assure that we are doing the "right thing" and providing for our city servants to the best of OUR community ability including retaining our skilled personnel. However, each of us, in our career path, makes a conscious choice as to where we work

and where we live. NO OTHER PARTY IS RESPONSIBLE FOR THOSE CHOICES!
And if we sour on those choices we are free to make other choices.

Now, let's turn to the issue of "binding arbitration":

1. Arbitration means that the two parties could not come to terms on the issues during negotiations and seek a qualified third party to make the decision for us. While that may work for "for profit" businesses, I am loath to have a third party, (not from Santa Clara) make decisions which are going to impact my taxes for the future when, as we discovered, that future may very well be uncertain.
2. It may be profitable for us to consider the process of selecting an arbitrator; which process can be a nightmare in itself. First we try to find a panel of arbitrators which would be willing to hear such a case. Then by "lottery" of such names we try to agree on an individual and are subject to his/her schedule. I guarantee that one of the moving parties to the case will not be satisfied with the selected arbitrator. An arbitration is a mini-judicial hearing with representatives of each side serving as attorneys and rules of evidence and other quasi-judicial regulations. And, ARBITRATIONS ARE NOT FREE!! Both parties share the cost, and Arbitrators, usually attorneys, are expensive.
3. Resorting to arbitration is admitting that our representatives were not equal to the task and will begin the process of sending more and more labor issues to that process for settlement. I'm not ready to admit that. I am very proud of the manner in which this city has managed its internal affairs in the past and hopeful to the point of anticipation that our elected and appointed city leaders can continue that record of success.

I am hopeful too that our police and fire personnel will continue their enviable record of community service. From what I understand, they are well paid with good benefits and are well managed in their various departments. I am sure that there are other cities which pay more money and have a more liberal benefit package and have more crime and more dangerous work assignments. But here, in Santa Clara, we're kind of doing the best that we can. I'm depending on our City Team negotiators to continue the process of negotiating in good faith with the understanding that we don't have limitless resources and remain fiscally responsible. I hope the Association's negotiators will exhibit the same desire to keep our business in our house.

Respectfully submitted,

Grant E. Danielson

SANTA CLARA OLD GUY

Grant E. Danielson
G'pa LDS - - - PFR

3442 Geneva Drive
Santa Clara, CA 95051
408-836-2330
408-248-0393
grantdaniel@aol.com

